

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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HONORABLE R. ROOKER, CLERK

STATE OF TENNESSEE, *ex rel.* ROBERT
E. COOPER, JR., ATTORNEY GENERAL
and REPORTER,

Plaintiff,

v.

No. 06C1093

CONSUMER DEPOT, LLC, AUCTION
LOGISTIX, LLC, MARTIN RANDOLPH
FIKE, CAROL FIKE and MICHAEL
HINDS, individually and collectively d/b/a
AUCTION DEPOT, BARGAIN DEPOT,
CONSUMER DEPOT, FACTORY DEALZ,
SURPLUS DEALZ, RETURN DEALZ,
auctiondepot99, auctiondepot-tn01,
bargaindepot04, bargainuniverse05,
factorydealz, returndealz04, software-
universe, ubid-it, saveonsalvage,
surplusdealz05, swdiscounters,
techgraveyard,youbid2003,
www.consumerdepot.com and
mr-appliance,

Defendants.

T2 DESIGNATION

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

COMES NOW Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, on behalf of Gary Cordell, Director of the Division of Consumer Affairs ("State"), and Defendants Consumer Depot, LLC, Martin Randolph Fike, Carol Fike, Michael Hinds and Auction Logistix, LLC, (collectively "Defendants" and as defined below), through counsel, and announce to the Court that they have agreed to a form of final

judgment and permanent injunction as set forth below, subject to the approval of the Court.

By agreeing to the entry of this Agreed Final Judgment and Permanent Injunction ("Judgment"), Defendants expressly waive and relinquish any right to challenge the form of the Judgment or any defense to the form of the Judgment, and the scope of the relief granted in the Judgment.

WHEREAS, this civil law enforcement proceeding was brought by the Attorney General and Reporter of the State of Tennessee on May 2, 2006, alleging that Defendants Consumer Depot, LLC and its owner and operator Martin Fike engaged in numerous violations of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, in connection with their sale and advertising of various electronics and related goods to the public through their Nashville retail store, on eBay, and through their own Internet websites; and

WHEREAS, on November 30, 2006, the State filed an Amended Complaint with leave of court which, among other things, added additional party Defendants Auction Logistix, Carol Fike and Michael Hinds; and

WHEREAS, on April 8, 2008, the State filed a Motion for Partial Summary Judgment which was granted by this Court on December 22, 2008; and

WHEREAS, on February 10, 2009, the State filed a Motion for Summary Judgment which was granted by this Court on January 4, 2010; and

WHEREAS, on January 4, 2010, the Court granted summary judgment to the State and ruled that, as a matter of law, all Defendants engaged in unfair and deceptive acts and

practices in connection with their sale and advertising of goods and services, in whole or in part, from Tennessee; and

WHEREAS, on January 4, 2010, the Court entered its Memorandum Upon Plaintiff, State of Tennessee's Motion for Summary Judgment, and made findings of fact and conclusions of law therein, supporting the issuance of an injunction; and

WHEREAS, on February 4, 2010, the Court has ordered the State to submit a proposed form of injunction in connection with its grant of summary judgment; and

WHEREAS, on January 22, 2010, after Defendants retained new counsel, such new counsel has entered his appearance in this case; and

WHEREAS, the parties conferred through counsel about entering into an agreed injunction and have since agreed on such proposed form of injunction; and

WHEREAS, on May 14, 2010, the parties jointly presented an Agreed Injunction to the Court for review and approval, and the Court so approved the parties' Agreed Injunction; and

WHEREAS, the parties have further conferred about resolving and finally concluding this civil law enforcement proceeding, including, but not limited to, permanent injunctive relief, restitution to consumers, costs of administering restitution, disgorgement of profits, statutory civil penalties, costs and attorneys' fees; and

WHEREAS, the parties have reached agreement regarding a full and final resolution of this civil law enforcement proceeding;

NOW THEREFORE, having reached agreement as to all the terms and conditions of an agreed final judgment and permanent injunction to be entered by the Court in this matter, and having submitted the same for approval and entry by this Court,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The jurisdiction of this Court is proper pursuant to the provisions of Tenn. Code Ann. § 47-18-108 and is admitted by Defendants. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Judgment, including the enforcement of compliance therewith and remedies, penalties and sanctions for violation thereof. Defendants agree to pay all court costs and attorneys' fees associated with any successful petitions to enforce any provision of this Judgment against Defendants.

2. Venue is proper in Davidson County under Tenn. Code Ann. § 47-18-108(a)(3), because it is the county where the majority of the unfair and deceptive acts and practices took place, and where Defendants engage in, or have engaged in, trade or commerce. Davidson County is also the county where all Defendants reside.

3. Because the present matter is proceeding pursuant to the State's Amended Complaint with leave of court, served and noticed to all parties, the 10 day notice of proceedings under Tenn. Code Ann. § 47-18-108(a)(2) has been provided.

4. The activities of Defendants are in or affecting trade or commerce within the meaning of Tenn. Code Ann. § 47-18-103(19).

5. The Amended Complaint states a claim upon which relief may be granted against Defendants.

6. This Judgment is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law and shall be issued without cost bond pursuant to Tenn. Code Ann. § 47-18-108(a)(4).

7. Entry of this Judgment is in the public interest.

I. FINDINGS

8. Plaintiff is the State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, and has the authority to enforce the Tennessee Consumer Protection Act of 1977 through a civil law enforcement proceeding.

9. Defendant Consumer Depot, LLC (“Consumer Depot”) is a Tennessee limited liability company with its principal place of business at 3332 Powell Avenue, Nashville, Tennessee. Consumer Depot sells various goods and services to the public from a retail facility located at 3332 Powell Avenue, through Consumer Depot’s website, and through third-party Internet auction websites such as eBay. Consumer Depot has operated under a number of different eBay user IDs and names including, but not limited to, BARGAINDEPOT04, UBID-IT, YOUNBID2003, RETURNDEALZ, TECHGRAVEYARD, SURPLUSDEALZ05, SWDISCOUNTERS, FACTORYDEALZ, MR-APPLIANCE, MUSIC-N-DVDS and UBID-TN-01, and has also referred to itself as Bargain Depot, Factory Dealz, Return Dealz and Surplus Dealz.

10. Defendant Auction Logistix, LLC (“Auction Logistix”) is a Tennessee limited liability company with a principal place of business at 3332 Powell Avenue, Nashville,

Tennessee. At all times relevant hereto, Auction Logistix has served as Consumer Depot's agent, has processed Consumer Depot's consumer payments and has actively participated in Consumer Depot's day-to-day activities, including the conduct at issue in this case.

11. Defendant Martin Randolph Fike ("Fike") is a Tennessee resident and a shareholder, officer, employee and manager of Consumer Depot and Auction Logistix. At all times relevant hereto, Fike has controlled, managed and been actively involved in Consumer Depot's day-to-day activities, including all conduct at issue in this case. Fike has served as the managing member of Consumer Depot since its inception.

12. Fike created Auction Logistix on June 2, 2004. Auction Logistix is owned and operated by Fike, who also controls and has the authority to control the acts and practices of Auction Logistix. At all times relevant hereto, Fike has controlled, managed and been actively involved in Auction Logistix's day-to-day activities, including all conduct at issue in this case. Fike has served as the managing member of Auction Logistix since its inception.

13. Defendant Carol Fike ("Carol Fike") is a Tennessee resident and a shareholder, officer, employee and manager of Consumer Depot, and is married to Fike. Carol Fike also controls and manages Consumer Depot and actively participates in its day-to-day activities, including all conduct at issue in this case.

14. Defendant Michael Hinds ("Hinds") is a Tennessee resident and an employee and agent of Consumer Depot. At all times relevant hereto, Hinds has personally and actively participated in Consumer Depot's day-to-day activities, including the conduct at issue in this case.

15. The Tennessee Division of Consumer Affairs (“DCA”) of the Department of Commerce and Insurance is a government unit charged with receiving complaints from the public regarding unfair or deceptive business practices. Numerous consumers have complained to the DCA that Consumer Depot has engaged in unfair and deceptive acts and practices, including false and deceptive advertising.

16. The parties agree that this Court’s previous Order Granting Partial Summary Judgment to Plaintiff, State of Tennessee, on the Issue of the Inapplicability of Defendants’ Affirmative Defenses, entered December 16, 2008, and Memorandum upon Plaintiff, State of Tennessee’s Motion for Summary Judgment, entered on January 4, 2010, including the findings of fact and conclusions of law therein, are hereby fully incorporated by reference.

II. DEFINITIONS

17. For the purpose of this Judgment, the following definitions shall apply:

- (A) **“Advertising” or “advertisement”** shall mean any written or verbal statement, illustration or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program length commercial (“infomercial”), Internet or in any other medium.
- (B) **“And” and “or”** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.
- (C) **“Asset” or “assets”** shall mean any legal or equitable interest in, right to, or claim to, any real and personal property— including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks,

notes, accounts, credits, receivables, funds, and all cash, wherever located.

- (D) **“Attorney General,” “State,” or “Plaintiff”** shall mean the Office of the Tennessee Attorney General.
- (E) **“Clear and conspicuous” or “clearly and conspicuously”** shall mean that a statement is “clear and conspicuous” or “clearly and conspicuously” disclosed if, by whatever medium, it is readily understandable and presented in such size, color, contrast, location, and audibility, compared to other information with which it is presented, that is readily apparent to the person to whom it is disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner which is readily noticeable and understandable. Further, a disclosure of information is not clear and conspicuous if, among other things, it is obscured by the background against which it appears or there are other distracting elements. Warnings, safety disclosures or statements of limitation must be set out in close conjunction with the benefits described, or with appropriate captions, of such prominence that warnings, disclosures or statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading or contrary. The statement shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the statement shall be used in any communication.
- (F) **“Consumer” or “customer”** shall mean consumer and person as defined in Tenn. Code Ann. § 47-18-103(2) and (13).
- (G) **“Days”** shall mean calendar days.
- (H) **“Defendants”** shall mean all Defendants Consumer Depot, LLC, Martin Randolph Fike, Carol Fike, Michael Hinds, Auction Logistix, LLC, and all entities listed in the caption of the State’s Amended Complaint, their successors and assigns.
- (I) **“Document”** shall be synonymous in meaning and equal in scope to the usage of the term in Tenn. R. Civ. P. 34, and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained, extracted and translated, if necessary, through

detection devices into reasonably usable form. A draft or non-identical copy is a separate document.

- (J) **“Including”** shall mean including, without limitation.
- (K) **“Material”** shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
- (L) **“Record”** shall mean any document, as document is defined in the Tennessee Rules of Civil Procedure.
- (M) **“Restitution Administrator”** shall mean any person selected by the Director of Consumer Affairs to assist with the State Restitution Program.
- (N) **“Restitution Facilitator”** shall mean James Cameron or any substitute facilitator approved by the Court who will handle any disputes relating to the restitution program set forth in paragraph IV B. 32.
- (O) **“Tennessee Consumer Protection Act” or “TCPA”** shall mean the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §47-18-101 *et seq.*, and as may be amended from time to time.
- (P) **“Trade,” “commerce,” or “consumer transaction”** shall mean the advertising, offering for sale, lease or rental, or distribution of any goods, services, or property, tangible or intangible, real, personal, or mixed, and other articles, commodities, or things of value wherever situated.

III. PERMANENT INJUNCTION

A. Prohibition Against Deceptive and Misleading Advertising

18. IT IS FURTHER ORDERED, that pursuant to Tenn. Code Ann. §§ 47-18-104(a), (b) and 47-18-108(a)(4), in connection with the advertising, promotion, offering for sale, or sale, lease or rental of any goods or services, Defendants shall not engage in any unfair or deceptive acts or practices in the conduct of trade or commerce or their business. Defendants shall fully abide by all provisions of the Tennessee Consumer Protection Act,

including but not limited to Tenn. Code Ann. § 47-18-104(b)(27) which prohibits any and all unfair and/or deceptive acts or practices.

19. IT IS FURTHER ORDERED, that pursuant to Tenn. Code Ann. §§ 47-18-104(a), (b) and 47-18-108(a)(4), Defendants shall, to the extent any or all of the Defendants conduct any business in whole or in part in Tennessee, obtain all required certificates, permits, registrations, licenses or other authorizations to conduct business in Tennessee, including all certificates, permits, registrations, licenses or other authorizations as may be required by municipalities, counties or other government subdivisions, as provided by law.

20. IT IS FURTHER ORDERED, that pursuant to Tenn. Code Ann. §§ 47-18-104(a), (b) and 47-18-108(a)(4), in connection with the advertising, promotion, offering for sale, or sale, lease or rental of any goods or services, all Defendants are hereby permanently restrained and enjoined from making, or assisting in the making, in whole or in part in the State of Tennessee, any advertisement, statement or representation of material fact that is fraudulent, false, unfair, deceptive, misleading or confusing, or tends to mislead or confuse, whether directly or by implication, orally or in writing, including the following:

- (A) Advertising any good or service for sale through the use of conflicting, confusing, deceptive or misleading terms, conditions or disclaimers, in violation of Tenn. Code Ann. § 47-18-104(a) and (b)(27);
- (B) Advertising that a particular good or service is offered for sale, but delivering or attempting to deliver a different good or service, in violation of Tenn. Code Ann. § 47-18-104(a) and (b)(27);
- (C) Advertising that new goods or services are being offered for sale, but delivering goods or services that are refurbished, used, consumer returns, demonstrators, damaged, or otherwise in any way not "new," in violation of Tenn. Code Ann. §47-18-104(a), (b)(6) and (b)(27);

- (D) Advertising that goods or services have been “checked,” “tested,” “inspected,” or otherwise examined, but delivering goods or services that are otherwise not in conformity with goods that were checked, tested, examined or inspected, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(2), (b)(5), (b)(7), (b)(21) and (b)(27);
- (E) Advertising that goods or services are functional, but delivering goods or services that Defendants knew, or should have known were defective or not useable for the intended purpose, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(2), (b)(3), (b)(5), (b)(7), (b)(9), (b)(21) and (b)(27);
- (F) Advertising that goods are in good cosmetic shape or otherwise appear in a particular condition, but delivering goods that are not in good cosmetic shape, or in the particular condition advertised or represented, or that Defendants knew or should have known were not as advertised, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(7), (b)(21) and (b)(27);
- (G) Advertising that goods “work,” but delivering goods that do not work or do not function properly, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(7), (b)(21) and (b)(27);
- (H) Advertising that certain components, parts or hardware are included with goods or services, but delivering goods or services without the advertised components, parts or hardware, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(7), (b)(21) and (b)(27);
- (I) Advertising that goods are sold with, or, covered by, guarantees, warranties, service contracts, or similar forms of protection, when, in fact, they are not, or are sold with, or, covered by, a lesser or more limited form of such guarantees, warranties, service contracts, or similar forms of protection, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(12), (b)(19) and (b)(27);
- (J) Advertising or offering goods or services for sale without clearly and conspicuously disclosing that such goods or services were previously owned, opened, used, or registered to someone else, in violation of Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(7), (b)(12), (b)(21) and (b)(27);
- (K) Advertising that a particular cost, or no cost, is being charged for shipping, handling or other incidental charges, but charging a different amount, in violation of Tenn. Code Ann. § 47-18-104(a) and (b)(27);
- (L) Advertising terms and conditions of sale which are illegal, contrary to law, unfair or deceptive or unconscionable, or otherwise represent that the transaction confers or involves rights, remedies or obligations that it does not

have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(12), (b)(27) and 47-18-113;

- (M) Advertising or otherwise posting terms or conditions of sale which are presented in a manner which deters refund or return requests, or legitimate consumer complaints, in violation of Tenn. Code Ann. § 47-18-104(b)(27), provided that nothing in this part shall prevent Defendants from taking steps to deter fraudulent returns;
- (N) Advertising that goods may be returned, but obstructing and evading returns, in violation of Tenn. Code Ann. § 47-18-104(b)(12) and (b)(27), provided that nothing in this provision shall prevent Defendants from taking steps to obstruct fraudulent returns;
- (O) Otherwise failing to clearly and conspicuously disclose all material terms and conditions related to a sale or offer for sale, or engaging in any other act or practice which is deceptive to the consumer or to any other person, in violation of Tenn. Code Ann. § 47-18-104(a) and (b)(27);
- (P) Failing to maintain sufficient personnel to ensure quality control in the inspection and shipment of goods or services to consumers, so as to prevent the delivery of goods or services in a condition other than as advertised; and
- (Q) Representing or implying that any procedures or other acts or practices hereafter used or engaged in by any of the Defendants have been approved or endorsed, in whole or in part, by the State of Tennessee, the Tennessee Division of Consumer Affairs, any governmental unit of the State of Tennessee and/or the Tennessee Attorney General or its employees.

B. Prohibition Against Unfair or Deceptive Customer Practices

21. IT IS FURTHER ORDERED, that pursuant to Tenn. Code Ann. §§ 47-18-104(a), (b) and 47-18-108(a)(4), in connection with the advertising, promotion, offering for sale, or sale, lease or rental of any goods or services, all Defendants are hereby permanently restrained and enjoined from engaging in any unfair or deceptive business acts or practices involving customer service, returns of goods or refunds, in whole or in part in the State of Tennessee, which is unfair or deceptive under the Tennessee Consumer Protection Act, including, but not limited to the following:

- (A) Failing to promptly respond to consumer inquiries, concerns or complaints, irrespective of whether such inquiries or complaints are presented verbally or in writing by U.S. mail, electronic mail, or otherwise, and irrespective of whether such inquiries are presented before, during, or after a purchase has been made, or through a governmental entity;
- (B) Failing to provide adequate customer service staff, telephone receptionists or similar personnel for the purpose of promptly and individually responding to any consumer concerns, inquiries or complaints, irrespective of whether such inquiries or complaints are presented verbally or in writing by the consumer or through a governmental entity;
- (C) Failing to timely issue refunds or credits within 14 days as promised or represented, or 14 days from the date when it could have first been reasonably determined that a refund was due, or as may otherwise be owing and due to a consumer by operation of contract, law, court order or otherwise;
- (D) Failing to provide full or complete refunds including reimbursement of all costs paid for shipping, handling, taxes and other incidental charges and return shipping costs to consumers or other persons, for any goods or services delivered to a consumer which are not as advertised or promoted, or were otherwise sold in violation of this Judgment;
- (E) Failing to issue full and complete refunds or credits as may otherwise be owing and due to a consumer by operation of contract, law, court order or otherwise;
- (F) Failing to reimburse all return costs incurred by any consumer who attempts to obtain a refund in any instance where such refund is due because the goods or services involved were not as represented, or the conduct of one or more Defendants was not in conformity with this Judgment;
- (G) Refusing to issue a refund on the grounds that a designated refund or return period of time has expired, in any instance where such refund is being sought because the goods or services involved were not as represented, or the conduct of one or more Defendants was not in conformity with this Judgment;
- (H) Refusing to issue a refund on the grounds that a consumer's paperwork, transaction information or similar data was not provided by the consumer, in instances where Defendants have sufficient information on hand to independently establish the consumer's purchase or transaction or attempted purchase or transaction;

- (I) Retaliating against any complaining consumer, or consumer attempting to obtain a refund or make a return, in any manner, including, but not limited to, publicly posting any derogatory or negative information about such consumer, except in instances where a consumer has engaged in criminal conduct or activity; and
- (J) Failing to clearly and conspicuously disclose any fact, information, term or condition which may be material to a consumer's decision to purchase or use any good or service.

C. Removal of Negative Feedback

22. Defendants shall, within 10 days of a request from a consumer or the State, immediately take reasonable steps to remove, or cause to be removed, any and all negative comments, feedback or derogatory information which Defendants may have posted, or caused to be posted against any consumer in any public or private forum, including, but not limited to, eBay, as a result of, or in response to, any complaint, negative comment or feedback which any such consumer may have posted or otherwise caused to be published against any one or more Defendants. Further, Defendants have represented and warranted to the State and this Court that they fully complied with the provision of the previously entered Agreed Injunction relating to the removal of negative feedback.

23. Defendants are to take all such steps as may be required to ensure the prompt and permanent removal of each and every such instance of such negative comments, feedback or derogatory information, including any misleading or inaccurate information regarding the litigation in this matter, as may have been posted against any consumer or regarding the State of Tennessee, by any Defendant, directly or indirectly, including through any and all aliases and trade names used by one or more Defendants, irrespective of whether

such aliases or trade names have been previously identified in this matter, since January 1, 2002.

24. Defendants are hereby permanently restrained and enjoined from engaging in any conduct involving the public or private posting of negative comments, feedback or any other form of derogatory information against any consumer who:

- (A) Posted negative feedback against any Defendant;
- (B) Requested a refund or return from any Defendant;
- (C) Brought, filed or otherwise caused a complaint to be made against one or more Defendants; or
- (D) Otherwise expressed any form of dissatisfaction in connection with any business act or practice engaged in by any Defendant in whole or in part in the State of Tennessee.

D. Record Keeping Requirements

25. IT IS FURTHER ORDERED that pursuant to Tenn. Code Ann. § 47-18-108(a)(4), and for a period of not less than five years from the date of entry of this Judgment, Defendants are hereby restrained and enjoined from failing to create and retain the following records within a secure location in the State of Tennessee identified in writing and available to the Attorney General for inspection, copying and review:

- (A) Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- (B) Personnel records accurately reflecting: the name, business and residential addresses, and business and residential telephone numbers of each person employed in any capacity by any Defendant, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; the date and reason for the person's termination, if applicable; and the amount of that person's annual compensation;

- (C) Consumer and/or customer files including names, addresses, telephone numbers, amounts paid, quantity of goods or services purchased, and description of goods or services purchased, contracts, consumer correspondence, refund or credit data, including the date of a request for a refund and the date and amount of any refund or credit paid to the consumer, records and all other information actually obtained in the ordinary course of business;
- (D) Complaints and refund requests relating to any consumers (whether received directly, indirectly or through any third party), including all documents and records pertaining to complaints, refund requests, and conversations with consumers;
- (E) A written acknowledgement by each person employed in any capacity by any Defendant that notwithstanding any provisions or agreements made by such person with one or more Defendants, including non-compete agreements, confidentiality agreements or other agreements relating in any way to their employment, each person should agree to fully and completely cooperate with any law enforcement authority, and cannot be compelled to disclose the fact that such cooperation has taken place, absent a valid judicial or administrative order compelling them to do so; and
- (F) All records and documents necessary to demonstrate full compliance with each provision of this Judgment.

E. Disseminating Consumer Data Prohibited

26. IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from selling, marketing, distributing or otherwise disseminating any consumer data, including names, addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained since January 1, 2002, through the date of the entry of this Judgment, or subsequently created in order to comply with this Judgment other than to law enforcement or pursuant to state or federal law, or as may otherwise be required in the ordinary course of business.

F. Monitoring Compliance of Personnel

27. IT IS FURTHER ORDERED, that pursuant to Tenn. Code Ann. § 47-18-108(a), Defendants are hereby permanently restrained and enjoined from:

- (A) Failing to take reasonable steps sufficient to monitor and ensure that all employees, representatives, and independent contractors engaged in sales or other consumer/customer service functions comply with this Judgment. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:
 - (1) Listening to and reviewing the oral representations made by persons engaged in sales or other customer service functions;
 - (2) Establishment and maintenance of review and oversight procedures of all advertisements prior to their dissemination to the public for compliance with this Judgment;
 - (3) Establishing a procedure for receiving and responding to consumer complaints;
 - (4) Establishment and maintenance of personnel training regarding obligations to comply with this Judgment; and
 - (5) Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;
- (B) Failing promptly to investigate fully all consumer concerns, requests and complaints received by any business to which this Judgment applies; and
- (C) Failing to take corrective action with respect to any employee, representative, independent contractor or other agent who is not complying with this Judgment, which may include disciplining and/or terminating such person or entity.

G. Distribution of Judgment

28. For a period of at least five years from the date of entry of this Judgment, Defendants shall deliver copies of this Judgment as directed below:

- (A) Defendants shall deliver copies of this Judgment and the TCPA to all of its employees and agents who engage in conduct related to the subject matter of the Judgment. For current personnel, delivery shall be within 10 days of service of this Judgment upon Defendants. For new personnel, delivery shall occur prior to their assumption of their responsibilities; and
- (B) Defendants shall secure a signed and dated statement acknowledging receipt of this Judgment and the TCPA within 30 days of delivery, from all persons receiving copies of the Judgment and the TCPA pursuant to this Section. Copies of such signed and dated statements shall be kept as part of each employee's personnel records and shall be provided to the State within 20 days from the date each statement is signed by such employees and agents.

IV. MONETARY RELIEF

A. State's AG/DCA Complaint Restitution Program ("State Restitution Program")

29. Defendants shall pay the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for restitution to be distributed by the Director of DCA (or his designee approved in consultation with the Attorney General), to all consumers who, between January 1, 2002 and 60 days after the date of entry of this Judgment, filed complaints with the Tennessee DCA, the Tennessee Attorney General, the Better Business Bureau of Middle Tennessee, the Federal Trade Commission, or other state Attorneys General, and who have suffered ascertainable losses regarding any of Defendants' businesses. The Director of DCA may, in his discretion, allocate money from restitution to pay for the costs of a Restitution Administrator in the event the Director in consultation with the Attorney General determines that the services of a Restitution Administrator are needed. In this case, the Attorney General shall seek Court approval of the Restitution Administrator and any fee proposed to be paid. Defendants waive and release any rights they may have to raise any objections to or issues with any Restitution Administrator proposed by the State.

30. Further, if after the distribution of restitution to the approximately 800 consumers identified in paragraph 29, the number of additional consumers who come forward in the 60 days after the entry of this Judgment would make a distribution economically inefficient (*e.g.* high administrative costs resulting in a nominal consumer restitution amount), as determined at the sole discretion of the Director of the Tennessee DCA in consultation with the Attorney General, restitution for additional consumers that come forward shall not be required to take place and any remaining funds shall be distributed as set forth in paragraph 31(L).

31. The following terms shall apply to all restitution payments made by the State Restitution Program:

- (A) To determine if additional consumers have filed written complaints in addition to those previously filed with the Tennessee DCA and/or the Tennessee Attorney General, the DCA shall contact the BBB of Middle Tennessee, the Federal Trade Commission, and the National Association of Attorneys General and give them 30 days to provide copies of any consumer complaints they have on record. Any consumers identified from this process shall be added to the list of eligible consumers if funds are still available to pay those consumers.
- (B) The date of filing a complaint shall be determined by the date of the postmark, the date of any official stamp indicating the date of receipt, the date of the telephone call, or the date of the electronic mail on the complaint. If no date is available using these criteria, the Director shall determine whether the complaint is eligible for the State Restitution Program.
- (C) The DCA shall process restitution checks for each consumer eligible under the State Restitution Program after the consumer provides a confirmed current mailing address.
- (D) Each consumer's restitution check shall be mailed to the address identified by the consumer along with a letter from the Tennessee Attorney General and Director of the DCA which shall be approved by the Attorney General prior to its use, and a copy of which is attached as Exhibit A.

- (E) The restitution checks and letters are recommended to be sent certified mail -- return receipt requested; however, the Director of the DCA may choose to use other nationally accepted mailing methods for economic reasons at the time of the mailing.
- (F) In order to address any unique situations that might arise, the DCA shall handle the situations as follows when issuing restitution checks to consumers:
 - (1) If a consumer who is eligible for restitution is now deceased, the restitution payment shall be made to the estate of the deceased person.
 - (2) If the purchase was made by a minor, the restitution check shall be made jointly payable to the minor child's parents or legal guardians. If the child is in the sole custody of one parent or only has one parent or one legal guardian, the restitution check shall be made payable to the sole custodial parent or single parent.
 - (3) If the purchase was made by a married couple who are now divorced, a single restitution check shall be made jointly payable to both the former husband and former wife, unless a protective order is in place relating to one of the parties. In that situation, two checks shall be issued, half to each former spouse.
 - (4) If the purchase was made jointly by two or more unrelated persons, a single restitution check shall be made jointly payable to those persons.
- (G) Prior to completion of the State Restitution Program, any eligible consumer who was/is inadvertently, mistakenly or otherwise omitted from the DCA's list of eligible consumers shall be added when discovered and paid in conformity with the State Restitution Program.
- (H) After issuing restitution checks to all other eligible consumers, if restitution monies still exist in the State Restitution Program and if any payment due to a specific consumer is returned as undeliverable and DCA is unable to locate the consumer or a consumer's check is not cashed within six months, the funds due to such consumer shall be delivered by the DCA to the Treasurer of the State of Tennessee for treatment as unclaimed property as mandated by the Tennessee Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101 *et seq.*
- (I) To provide restitution to the largest number of consumers, the DCA shall not pay statutory interest to consumers under the State Restitution Program.

- (J) All decisions or recommendations made by the Director of the DCA to complete the State Restitution Program shall be final and non-appealable.
- (K) This Court expressly retains jurisdiction to permit the DCA, through the Attorney General, to seek further approval or direction relating to payment of restitution under the State Restitution Program as it deems necessary until all payments have been made. Defendants waive and relinquish any and all rights they may have to appear, object or otherwise raise issues or participate in any such proceeding relating to the State Restitution Program.
- (L) In the unlikely event any funds remain in the account established for this Restitution Program after all eligible consumers have been paid and after reasonable attempts have been made to locate the specific consumer, any remaining funds of the portion the State of Tennessee obtains under this Judgment shall be divided in the percentage indicated and used as follows:
 - (1) 15% to the Tennessee Attorney General's Office for reasonable and appropriate attorneys' fees and costs of investigation, prosecution and monitoring of this matter and any such funds obtained by the Attorney General's Office may be used for consumer protection purposes or other lawful purposes at the sole discretion of the Tennessee Attorney General.
 - (2) 10% to the Tennessee DCA and any such funds obtained by the DCA shall be used to pay the costs associated with the restitution plan, to fund consumer education project(s) or investigation and enforcement costs and expenses for investigations and cases under the Tennessee Consumer Protection Act of 1977 at the sole discretion of the Director of the Tennessee DCA.
 - (3) 75% to the Tennessee General Fund to be used by the State Treasurer for application to the General Fund.

B. Second Phase Restitution Program

32. Commencing no later than August 31, 2013, Defendants shall, in addition to the State Restitution Program described above, pay restitution in the form of direct refunds on a rolling basis (described in paragraph 36) to all consumers who have submitted complaints to Defendants since May 5, 2006 and up to the date of entry of this Judgment,

and who have suffered ascertainable losses related to any one or more of the following issues:

- (A) The condition of the good was not as represented;
- (B) The good did not work properly or as represented;
- (C) The good received was not the advertised good;
- (D) The good was never delivered;
- (E) The good was not as promised;
- (F) The warranty for the good was not as represented;
- (G) Improper, unauthorized, excessive, premium shipping, or other unauthorized charges were charged to the consumer;
- (H) The consumer should have previously received a refund of the entire purchase price, and the purchase price was previously only partially refunded;
- (I) The consumer should have previously received a full refund of shipping costs, and shipping costs, including return shipping costs, were previously only partially refunded;
- (J) The good was not lawful to sell in or from the State of Tennessee or was otherwise unlawful to offer to sell under any state or federal law, regulation or rule;
- (K) The good or terms of sale were otherwise not as represented;
- (L) Defendants failed to clearly and conspicuously disclose any fact, information, term or condition which may be material to a consumer's decision to purchase or use any good or service;
- (M) The good was sold in violation of any term or condition of the previously entered Agreed Injunction or this Judgment; and/or
- (N) Defendants' advertising was otherwise deceptive or misleading.

33. Defendants shall review all complaints submitted by consumers who had previously been denied refunds by Defendants, or received only partial refunds from

Defendants. Defendants shall not review complaints from consumers that are also the subject of the State Restitution Program identified in Paragraphs 29-31. Restitution shall be in the amount of ascertainable losses related to any of the issues listed in Paragraph 32. Restitution shall include, to the extent necessary to reimburse the consumer for ascertainable losses sustained, refunds of all original and return shipping costs, taxes, and/or fees by whatever name along with all monies paid by the consumer for the good. For the purposes of the Second Phase Restitution Program, restitution shall not include instances where the denial of refunds occurred because a consumer failed to complain within six months from the date of purchase of the good unless the consumer can provide a reasonable basis for such failure, including, but not limited to, military deployment or extended illness.

34. Defendants shall review complaints submitted by all consumers who expressed dissatisfaction described in paragraph 32 above to Defendants in any manner, whether directly or indirectly, or through the Internet, electronic mail, telephone, in person or by any other form of written or verbal correspondence.

35. Defendants shall pay such additional restitution on a rolling basis, as follows:

- (A) Following entry of this Judgment, at the end of each subsequent calendar month, Defendants shall compile their complaint records for a three month period ("quarter") beginning chronologically with the first quarter ending June 30, 2006 and continuing to October 17, 2011, and shall pay all restitution due under the foregoing provisions to all consumers who made any form of complaint to Defendants or their agents, or otherwise expressed any form of dissatisfaction regarding any of the issues outlined in paragraph 32 above, during that particular quarter.
- (B) Such monthly payments, as determined by Defendants' preceding quarters of business, shall continue month-to-month until all restitution has been paid in full to all eligible consumers. If Defendants are unable to provide a refund by a chargeback to the consumer's credit card, Defendants shall contact each eligible consumer by electronic mail or U.S. Mail to obtain confirmation of the

consumer's current mailing address using the form attached as Exhibit B. Defendants shall not include any other materials or information in the mailing. The envelopes used for mailing shall clearly and conspicuously include "Information regarding Court-Ordered Restitution Program" and shall also include "address correction requested."

- (C) Defendants may accomplish restitution by crediting the consumer's credit card, or, in cases where Defendants are unable to credit a credit card, then Defendants may accomplish restitution by issuing a check, backed by good and sufficient funds and valid for at least 90 days, to the consumer.
- (D) On or before the fifth business day of each quarter, Defendants shall submit an electronic report in an .xls format to the Attorney General for review. The report shall identify (to the extent that such information is available) all consumers by name, address, electronic mail address and telephone number, all restitution amounts owed, and a brief explanation as to how the restitution amount was determined. Defendants shall also provide proof of payment to each consumer.
- (E) In the event Defendants determine, in good faith, that restitution is not owing to a particular consumer, Defendants shall provide a brief explanation of why they believe a refund is not warranted in their aforesaid electronic report. Good faith belief shall not include Defendants' reliance on any conduct that the Attorney General has alleged to be unlawful in this case. Such determinations shall be made by no later than 10 days after the end of the applicable quarter review period.
- (F) In the event Defendants determine that a consumer cannot be located after reasonable, good faith attempts to locate the consumer, such information shall be included in the electronic report to the Attorney General, along with all of the consumer's contact information on file and attempted by Defendants. Provided the list includes less than 50 consumers that Defendants could not locate, the Attorney General or the DCA may, within 60 days of such electronic report, attempt to locate such consumer and if successful, may require Defendants to provide a restitution check to the Attorney General or the DCA, backed by good and sufficient funds, which will be sent to the consumer at the new address. If the list includes more than 50 consumers, the Attorney General or the DCA shall have 120 days to provide another address.
- (G) Defendants shall assign at least one full-time employee and others as needed to fully comply with this Judgment to the task of reviewing the quarter's worth of complaints each month and generating the report as described in this Section.

- (H) Each consumer's restitution check shall be mailed along with a letter attached as Exhibit A from the Attorney General and Director of DCA. Alternately, if a consumer is issued a credit to their credit card, within 10 days of issuance of the credit, Defendants shall deliver the consumer a copy of the letter attached as Exhibit C from the Tennessee Attorney General and Director of the DCA. If Defendants elect to use electronic mail, they shall confirm delivery of the information. If delivery is not confirmed, Defendants shall mail the notice to the consumer's last known address.
- (I) The checks used shall not include a release of any type or other language that the consumer must sign to cash the check or to receive any credit to his or her card. Defendants shall also not include any other promotional materials or documents other than that which is required herein.
- (J) The restitution checks and letters are recommended to be sent certified mail – return receipt requested.
- (K) In order to address any unique situations that might arise, Defendants shall handle the situations as follows when issuing restitution checks to consumers:
 - (1) If a consumer who is eligible for restitution is now deceased, the restitution payment shall be made to the estate of the deceased person.
 - (2) If the purchase was made by a minor, the restitution check shall be made jointly payable to the minor child's parents or legal guardians. If the child is in the sole custody of one parent or only has one parent or one legal guardian, the restitution check shall be made payable to the sole custodial parent or single parent.
 - (3) If the purchase was made by a married couple which are now divorced, a single restitution check shall be made jointly payable to both the former husband and former wife, unless a protective order is in place relating to one of the parties. In that situation, two checks shall be issued, half to each former spouse.
 - (4) If the purchase was made jointly by two or more unrelated persons, a single restitution check shall be made jointly payable to those persons.
- (L) If Defendants' quarterly restitution program has not been completed, any eligible consumer who was/is inadvertently, mistakenly or otherwise omitted from the Defendants' quarterly list of consumers eligible shall be added when discovered and within 10 days of discovery in conformity with this Judgment. Defendants shall notify the State of each such instance along with an

explanation of the error. This paragraph in no way shall limit Defendants' liability for any failure to comply with this Judgment.

- (M) After issuing restitution checks, if any payment to a consumer is returned as undeliverable and the Defendants are unable to locate the consumer or a consumer's check is not cashed within six months, the funds due to such consumer shall be delivered by Defendants to the Treasurer of the State of Tennessee for treatment as unclaimed property as mandated by the Tennessee Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101 *et seq.* Defendants shall provide proof of delivery of said funds along with a list of the consumers' names and last known contact information to the Attorney General within 10 days of Defendants providing such information to the Treasurer.

**C. Independent Restitution Facilitator for the Second Phase
Quarterly Restitution Program**

36. The parties have agreed that James Cameron, Esquire, shall serve as the independent Restitution Facilitator for purposes of the Second Phase quarterly restitution program of this Judgment, and that any disputes which may arise regarding whether or not restitution should be paid in any particular case, as described in the above paragraphs, shall be timely submitted to the Restitution Facilitator for review. Upon review, the Restitution Facilitator's determination shall be final, non-appealable and binding. Should the Restitution Facilitator determine payment is required, Defendants shall seek confirmation of the consumer's current address and shall pay restitution to any eligible consumer by check backed by good and sufficient funds to the consumer at their current address within 10 days of the Facilitator's determination. Defendants shall provide proof to the Attorney General of payment to such consumer within 10 days of payment of restitution to that consumer.

37. Defendants shall pay the sum of TWENTY THOUSAND DOLLARS (\$20,000.00) to the Attorney General, which shall be held to pay for the initial costs and fees incurred by the Restitution Facilitator in performing his duties under this Judgment.

Defendants shall be required to pay any additional sums needed to pay the Restitution Facilitator for all services required under this Judgment to the Attorney General within 10 days of a request. Defendants shall be required to pay a minimum of FIVE THOUSAND DOLLARS (\$5,000.00) to the Attorney General each time requested so that sufficient funds are available to pay the Facilitator. Within 10 days of entry of this Judgment, the Defendants shall be required to contract with the Restitution Facilitator for his services. If any funds remain from a \$5,000 payment the Attorney General received for payment of the Facilitator under this part at the conclusion of the State Restitution Program, they shall be returned to Defendants' counsel so long as Defendants have completed all monetary provisions of this Judgment in a timely fashion. The Restitution Facilitator shall be considered an officer of the Court and shall be required to abide by this Judgment and the rules of review established by the parties, which shall be enforceable by this Court.

D. Attorneys' Fees and Costs to the State

38. Pursuant to Tenn. Code Ann. § 47-18-108(a)(4) and 47-18-108(a)(5), the Court finds that Defendants shall pay the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) to the State of Tennessee Attorney General for reasonable and appropriate attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes or other lawful purpose at the sole discretion of the Attorney General. FIFTY THOUSAND DOLLARS (\$50,000) is far less than the State actually expended in attorneys' fees and costs. However, in order to provide restitution to consumers, the State has elected to receive this lesser amount. The

State asserts that it actually incurred reasonable and appropriate attorneys' fees and costs in excess of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000).¹

E. Civil Penalties

39. Pursuant to Tenn. Code Ann. § 47-18-108(b)(3), the Court finds that Defendants shall pay the sum of THIRTY THOUSAND DOLLARS (\$30,000.00) to the State of Tennessee's General Fund as a remedial civil penalty for Defendants' acts and/or practices described in the State's Amended Complaint.

F. Monies on Account With the Court

40. IT IS ORDERED that the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), plus any interest that has accrued, currently on account with this Court pursuant to the Agreed Injunction Order, shall be paid to the Attorney General of the State of Tennessee to satisfy the amounts to be paid by Defendants in paragraphs 29, 37 (only the first \$20,000.00), 38, and 39. Defendants shall no longer possess any interest or right in such monies, except as expressly provided in paragraph 37 (relating to a payment of \$5,000 if received for the Facilitator but not used).

V. GENERAL PROVISIONS

41. The acceptance of this Judgment by the State shall not be deemed approval by the State of any of Defendants' advertising or business practices.

¹ Of the FIFTY THOUSAND DOLLARS (\$50,000) paid for attorneys' fees and costs under this Section, ELEVEN THOUSAND TWO HUNDRED TWENTY-SIX DOLLARS AND TWENTY-SIX CENTS (\$11,226.26) shall be paid to the Tennessee DCA for costs of litigation, which shall be used to fund consumer education project(s) or investigation and enforcement costs and expenses for investigations and cases under the Tennessee Consumer Protection Act of 1977 at the sole discretion of the Director of the Tennessee DCA.

42. This Judgment may only be enforced by the State of Tennessee, Defendants, and this Court.

43. The titles and headers to each section of this Judgment are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Judgment.

44. As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

45. Nothing in this Judgment shall limit the Attorney General's right to obtain information, documents or testimony from Defendants pursuant to any state or federal law, regulation or rule.

46. Nothing in this Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Judgment shall not bar the State, or any other governmental entity, from enforcing laws, regulations or rules against Defendants.

47. Nothing in this Judgment constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

48. Defendants hereby expressly waive and relinquish any and all rights, remedies, appeals or other interests that they/he/she/it may possess to a jury trial or any derivative rights that might flow from a trial by jury under the Tennessee Constitution or United States Constitution or any other law, regulation or rule.

49. No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Court and then only to the extent specifically set forth in such written waiver, modification or amendment.

50. Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment and the imposition of any applicable penalties, including but not limited to contempt, civil penalties as set forth in Tenn. Code Ann. § 47-18-108(c) and/or the payment of attorneys' fees to the State and other applicable state law.

51. If any clause, provision or section of this Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Judgment and this Judgment shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

52. Time shall be of the essence with respect to each provision of this Judgment that requires action to be taken by Defendants within a stated time period or upon a specified date.

53. Nothing in this Judgment shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

54. This Judgment sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Judgment which are not fully expressed hereto or attached hereto.

55. Defendants shall not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part in the State of Tennessee which are prohibited by this Judgment or for any other purpose which would otherwise circumvent any part of this Judgment or the spirit or purposes of this Judgment.

56. Defendants agree that the consumer names, addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained during any period when it conducted businesses in whole or in part in Tennessee, and during the implementation of this Judgment and the settlement discussions leading up to this Judgment, shall not be used for any marketing purposes or provided to any person other than law enforcement for any reason, including, but not limited to, for the purposes of marketing to these consumers now or in the future.

57. The lists and reports provided to the State of Tennessee, the Restitution Administrator (if any), the Restitution Facilitator, and in the possession of Defendants as part of this litigation or created to implement the terms of this Judgment, shall not be released to any person, other than law enforcement authorities or pursuant to state or federal law, to protect the interest of consumer privacy, and to prevent further marketing to these consumers and possible identity theft.

58. Defendants have provided the State with certain documents, advertisements, and contracts. Defendants acknowledge and agree that providing these documents to the State in no way constitutes the State's pre-approval, review for compliance with state or federal law or with this Judgment, or a release of any issues relating to such documents.

59. Defendants agree that this Judgment does not entitle them to seek or to obtain attorneys' fees as a prevailing party under any statute, regulation or rule, and Defendants further waive any rights to attorneys' fees that may arise under such statute, regulation or rule.

60. Defendants further agree to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Judgment.

61. This Judgment may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Judgment may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

VI. FORBEARANCE ON EXECUTION AND DEFAULT

62. No execution or garnishment on the monetary portion of this Judgment as it relates to the Second Phase Restitution Program set forth in paragraphs 32- 38 above shall issue so long as Defendants make timely and complete restitution payments and Restitution Facilitator's costs in accordance with paragraphs 37 and 38 herein. In the event Defendants fail to make any payment required by this Judgment, the entire monetary balance under this Judgment then remaining become due and payable without notice and may be collected by

execution, garnishment or other legal process, together with interest pursuant to Tenn. Code Ann. § 47-14-121 from the date of entry of this Judgment. Defendants agree to pay all attorneys' fees and costs including, but not limited to, court costs, travel expenses, and/or deposition costs associated with any such collection efforts.

63. All payments shall be delivered to the Consumer Advocate and Protection Division, Office of Attorney General by a certified check or cashier's check made payable to "Treasurer, State of Tennessee – Attorney General," and mailed to the attention of Deputy Attorney General, Tennessee Attorney General's Office, Consumer Advocate & Protection Division, P.O. Box 20207, Nashville, TN 37202-0207.

64. Defendants shall be required to retain proof of all restitution payments and payments for the Restitution Facilitator in the form of canceled checks for each payment made by check and documents confirming the credits to consumer's credit cards for a full two years following the last and final payment. Defendants shall provide proof of all payments to the State within 10 days of a request for such information.

65. The State or its agent shall have the right to periodic audits and reviews of the Second Phase Restitution Program. Defendants shall permit access to the necessary records and process used during regular business hours as it deems appropriate.

66. Defendants represent and warrant should any of the Defendants' financial situation and assets increase significantly that they will increase the restitution payments to consumers so that restitution is paid more quickly to consumers. In the event the State has a reasonable basis to believe that Defendants' financial situation and assets have increased significantly, it may apply to the Court for a review of the financial status of the Defendants

including the completion of the financial forms attached as Exhibit D to this Judgment. The Court shall have continuing jurisdiction to order that the restitution program be expedited if Defendants' financial situation changes significantly for the better. Defendants understand that they do not have a right to request a reduction in the timing of the restitution payments.

67. On the day of entry of this Judgment, each of the Defendants shall provide the State with a current address and telephone number where he/she/it can be contacted and served with process in the event of default until the monetary portion of this Judgment is completed. Each of the Defendants shall further be required to provide any new address, telephone number and e-mail address within 10 days of relocating to a new address or of obtaining a new telephone number or e-mail address. Service upon each of the Defendants for the purposes of enforcing the monetary portion of this Judgment in the event of default shall be effective upon mailing a notice via certified mail - return receipt requested and waiting 30 days. If no response is received, the State may obtain a default judgment or other adverse ruling sought by the State.

68. Defendants agree that if Defendants default on any monetary payment herein, the State may set aside this Judgment and seek a judgment including the full amount of civil penalties, attorneys' fees, restitution, disgorgement, licensure revocation and other remedies that would have been available to the State prior to entry of this Judgment.

69. Defendants have represented and warranted that they have reviewed their financial situation and that:

- (A) they are currently solvent within the meaning of 11 U.S.C. § 547(b)(3), and will not be rendered insolvent by their payments to the State of Tennessee

hereunder. Further, the parties expressly warrant that in evaluating whether to execute this agreement, the parties have:

- (1) intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. § 547(c)(1), and
 - (2) concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange; and
- (B) the following are correct statements:
- (1) Defendants were not insolvent within the meaning of 11 U.S.C. § 548(a)(1)(B)(ii) on the date of these promises, covenants and obligations and did not become insolvent within the meaning of that section as a result of these promises, covenants and obligations; and
 - (2) Defendants are receiving reasonably equivalent value, so as to take these promises, covenants and obligations outside the purview of 11 U.S.C. § 548 (a)(1)(B)(i).

70. Defendants shall give written notice of any bankruptcy filing to:

Deputy Attorney General
Office of the Tennessee Attorney General
Consumer Advocate & Protection Division
P.O. Box 20207
Nashville, TN 37202-0207

and

Tennessee Division of Consumer Affairs
c/o Tennessee Attorney General's Office
Bankruptcy Division

P.O. Box 20207
Nashville, TN 37202-0207

71. No consent, expressed or implied, by the State to any breach of the payment plan or any of the covenants herein to be performed by Defendants shall be deemed to be a waiver of any succeeding breach of the same.

VII. COMPLIANCE WITH ALL LAWS

72. Nothing in this Judgment shall be construed as relieving Defendants of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

73. Pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108(c), any knowing violation of the terms of this Judgment shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.

74. Upon execution and filing of this Judgment, any subsequent failure to comply with the terms hereof is a prima facie evidence of a violation of the Tennessee Consumer Protection Act.

VIII. MONITORING FOR COMPLIANCE

75. Upon request, Defendants shall provide books, records or documents to the State at any time, and further, to informally, or formally under oath, provide testimony or other information to the State relating to compliance with this Judgment. Defendants shall make any requested information available within 7 days of the request, at the Office of the

Attorney General or at such other location within the State of Tennessee as is mutually agreeable in writing to Defendants and the Attorney General. This shall in no way limit the State's right to obtain documents, records, testimony or other information pursuant to any law, regulation, or rule.

76. Within 30 days of the entry of this Judgment, Defendants shall submit a copy of this Judgment to each of their officers, directors, owners, and employees. Within 45 days of entry of this Judgment, Defendants shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Judgment.

77. The State of Tennessee has the right to conduct undercover investigations of Defendants for the purpose of confirming compliance with this Judgment and state law. The State's undercover operatives, if any, are not required to disclose that they are representatives of the State of Tennessee when making contact with Defendants. Further, the State may record (audio and/or video) any or all aspects of its interaction with Defendants without notice to Defendants. Defendants agree to void any sale that is conducted by an undercover operative on behalf of the State, upon notification by the State.

IX. PRIVATE RIGHT OF ACTION

78. Nothing in this Judgment, including participation in the State Restitution Program, Second Phase Restitution Program, or the Restitution Facilitator process, shall be construed to affect any private right of action that a consumer, person, entity, or any local, state, federal or other governmental entity, may hold against the Defendants. However, any monies received by a specific consumer may operate as a set off against any private action award he/she/it may receive if it involves the same facts and allegations set forth in the

State's Amended Complaint during the same timeframe. Further, nothing in this Judgment shall be construed to toll any statute of limitation for any consumer.

X. NOTIFICATION TO STATE

79. For five years following execution of this Judgment, Defendants shall notify the Attorney General, in writing at least 30 days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Defendants' status that may impact in any way compliance with obligations arising out of this Judgment.

80. Any notices required to be sent to the State or the Defendants by this Judgment shall be sent by United States mail, certified mail - return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the Tennessee Attorney General:

Deputy Attorney General
Office of the Tennessee Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202-0207
Telephone: (615) 741-1671
Facsimile: (615) 532-2910

For Defendants:

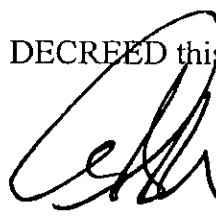
Nader Baydoun, BPR #3077
Stephen C. Knight, BPR # 15514
BAYDOUN & KNIGHT, PLLC
Suite 2650, Fifth Third Center

424 Church Street
Nashville, Tennessee 37219
Telephone (615) 256-7788
Facsimile: (615)256-6611

XI. PAYMENT OF COURT COSTS

81. All court costs associated with this action and any other incidental costs or expenses incurred thereby shall be borne by Defendants. No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

IT IS SO ORDERED, ADJUDGED AND DECREED this ____ day of _____, 2013.



JUDGE AMANDA McCLENDON

JOINTLY SUBMITTED FOR ENTRY BY:

OFFICE OF THE ATTORNEY GENERAL

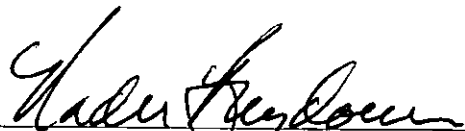


ROBERT E. COOPER, JR., BPR#010934
ATTORNEY GENERAL AND REPORTER



OLHA N. RYBAKOFF, BPR# 24254
JENNIFER E. PEACOCK, BPR # 22227
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Post Office Box 20207
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Telephone: (615) 532-2590
Facsimile: (615) 532-2910
olha.rybakoff@ag.tn.gov

COUNSEL FOR THE DEFENDANTS

A handwritten signature in cursive script, appearing to read "Nader Baydoun", is written over a horizontal line.

Nader Baydoun, BPR #3077

Stephen C. Knight, BPR # 15514

BAYDOUN & KNIGHT, PLLC

Suite 2650, Fifth Third Center

424 Church Street

Nashville, Tennessee 37219

Telephone: (615) 256-7788

Facsimile: (615) 256-6611

sknight@baydoun.com

DEFENDANT CONSUMER DEPOT, LLC'S SIGNATURE AND ACKNOWLEDGMENT

Defendant Consumer Depot, LLC, and its attorneys have read and understand this Judgment and each of its terms. Defendant Consumer Depot, LLC admits to the jurisdiction of the Court in this matter and consents to the entry of this Judgment. Defendant Consumer Depot, LLC, agrees to each and every term contained herein.

I, Martin R. Fike, being first duly sworn on oath, depose and say that I am an officer of Consumer Depot, LLC, and am fully authorized and empowered to sign this Judgment on behalf of Consumer Depot, LLC, and bind the same to the terms hereof.

By: 

Name: Martin R. Fike

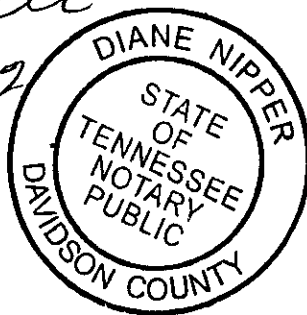
Title: President of Consumer Depot, LLC

SUBSCRIBED AND SWORN to before

me this 15th day of December, 2011.

Notary Public: 

My Commission Expires: 1/09/12



DEFENDANT AUCTION LOGISTIX, LLC'S SIGNATURE AND
ACKNOWLEDGMENT

Defendant Auction Logistix, LLC, and its attorneys have read and understand this Judgment and each of its terms. Defendant Auction Logistix, LLC admits to the jurisdiction of the Court in this matter and consents to the entry of this Judgment. Defendant Auction Logistix, LLC, agrees to each and every term contained herein.

I, Martin R. Fike, being first duly sworn on oath, depose and say that I am an officer of Auction Logistix, LLC, and am fully authorized and empowered to sign this Judgment on behalf of Auction Logistix, LLC, and bind the same to the terms hereof.

By: _____

Name: Martin R. Fike

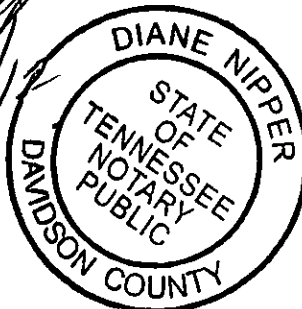
Title: President of Auction Logistix, LLC

SUBSCRIBED AND SWORN to before

me this 1st day of December, 2011.

Notary Public: _____

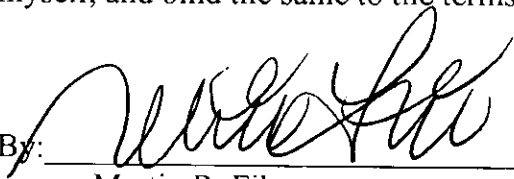
My Commission Expires: 1/09/12



DEFENDANT MARTIN R. FIKE'S SIGNATURE AND ACKNOWLEDGMENT

Defendant Martin R. Fike and his attorneys have read and understand this Judgment and each of its terms. Defendant Martin R. Fike admits to the jurisdiction of the Court in this matter and consents to the entry of this Judgment. Defendant Martin R. Fike agrees to each and every term contained herein.

I, Martin R. Fike, being first duly sworn on oath, depose and say that I am an individual and am fully authorized and empowered to sign this Judgment on behalf of myself, and bind the same to the terms hereof.

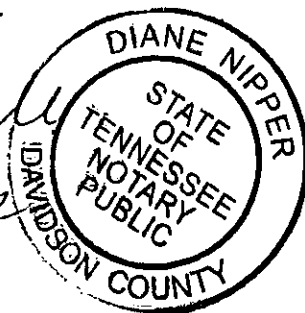
By: 
Martin R. Fike

SUBSCRIBED AND SWORN to before

me this 15th day of December, 2011.

Notary Public: 

My Commission Expires: 1/09/12



DEFENDANT CAROL FIKE'S SIGNATURE AND ACKNOWLEDGMENT

Defendant Carol Fike and her attorneys have read and understand this Judgment and each of its terms. Defendant Carol Fike admits to the jurisdiction of the Court in this matter and consents to the entry of this Judgment. Defendant Carol Fike agrees to each and every term contained herein.

I, Carol Fike, being first duly sworn on oath, depose and say that I am an individual and am fully authorized and empowered to sign this Judgment on behalf of myself, and bind the same to the terms hereof.

By: Carol Fike
Carol Fike

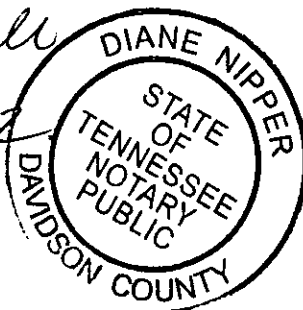
SUBSCRIBED AND SWORN to before

me this 1st day of December, 2011.

Notary Public:

My Commission Expires:

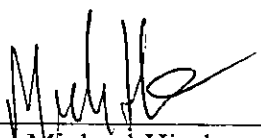
Diane Nipper
1/09/12



DEFENDANT MICHAEL HINDS'S SIGNATURE AND ACKNOWLEDGMENT

Defendant Michael Hinds and his attorneys have read and understand this Judgment and each of its terms. Defendant Michael Hinds admits to the jurisdiction of the Court in this matter and consents to the entry of this Judgment. Defendant Michael Hinds agrees to each and every term contained herein.

I, Michael Hinds, being first duly sworn on oath, depose and say that I am an individual and am fully authorized and empowered to sign this Judgment on behalf of myself, and bind the same to the terms hereof.

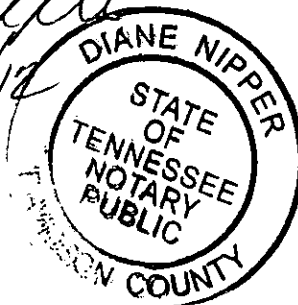
By: 
Michael Hinds

SUBSCRIBED AND SWORN to before

me this 15th day of December 2011.

Notary Public: 

My Commission Expires: 1/09/12



CERTIFICATE OF SERVICE

I, Olha N.M. Rybakoff, Senior Counsel, hereby certify that on

July 12, 2013 I caused a copy of the foregoing Judgment, to be hand-delivered to Nader Baydoun, Esquire, and Stephen C. Knight, Esquire, Counsel for

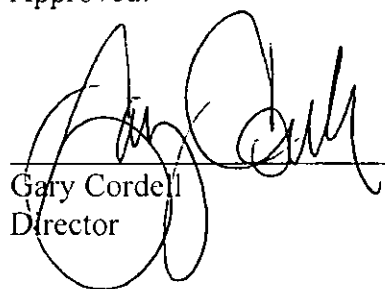
Defendants, addressed as follows:

Nader Baydoun, Esquire
Stephen C. Knight, Esquire
BAYDOUN & KNIGHT, PLLC
Suite 2650, Fifth Third Center
424 Church Street
Nashville, Tennessee 37219



OLHA N.M. RYBAKOFF, BPR # 24254
Senior Counsel

Approved:



Gary Cordell
Director

Exhibit A

STATE OF TENNESSEE



GARY W. CORDELL
DIRECTOR OF THE DIVISION OF CONSUMER AFFAIRS
DEPARTMENT OF COMMERCE AND INSURANCE
TELEPHONE (615) 741-4737
FACSIMILE (615) 532-4994
tn.gov/consumer



FILED
JUL 12 PM 4:01

ROBERT E. COOPER, JR.
ATTORNEY GENERAL AND REPORTER
TELEPHONE (615) 741-1671
FACSIMILE (615) 741-9009
tn.gov/attorneygeneral

«DATE»

D.C.

Via Certified U.S. Mail – Return Receipt Requested

CONSUMER DEPOT, LLC/AUCTION LOGISTIX, LLC
COURT-ORDERED REFUND CHECK

«FIRST_NAME» «LAST_NAME»
«ADDRESS»
«CITY», «STATE» «ZIP»

Re: *State of Tennessee v. Consumer Depot, LLC, Auction Logistix, LLC, Martin Randolph Fike, Carol Fike, and Michael Hinds, Davidson County Circuit Court No. 06C1093*

Dear «FIRST_NAME» «LAST_NAME»:

The State of Tennessee has resolved its Tennessee Consumer Protection Act law enforcement litigation in this matter by reaching a settlement with all of the defendants. In connection with this court-approved settlement, we are pleased to provide you with the enclosed refund check. This check should represent the full amount you paid to Consumer Depot or Auction Logistix, less any refunds you have already received. If you believe the amount of your check is incorrect, please contact:

(INSERT SPECIALIST AT DCA's NAME, NUMBER AND EMAIL ADDRESS).

Under the terms of the settlement and state law, cashing this refund check will not release or waive any rights that you may have. The Agreed Final Judgment can be found at <http://www.tn.gov/attorneygeneral/cases/consumerdepot/consumerdepot.html>. Please note that the refund check is good for (X) days so it is important that you cash it before it expires.

The Division of Consumer Affairs and the Attorney General's Office are pleased to be able to provide this refund to you as part of the settlement.

Sincerely,

Gary Cordell
Director, Division of Consumer Affairs

Robert E. Cooper, Jr.
Attorney General and Reporter

Exhibit B

STATE OF TENNESSEE



GARY W. CORDELL
DIRECTOR OF THE DIVISION OF CONSUMER AFFAIRS
DEPARTMENT OF COMMERCE AND INSURANCE
TELEPHONE (615) 741-4737
FACSIMILE (615) 532-4994
tn.gov/consumer



ROBERT E. COOPER, JR.
ATTORNEY GENERAL AND REPORTER
TELEPHONE (615) 741-1671
FACSIMILE (615) 741-2009
tn.gov/attorneygeneral

«DATE»

Via Certified U.S. Mail – Return Receipt Requested

CONSUMER DEPOT, LLC/AUCTION LOGISTIX, LLC
ADDRESS CONFIRMATION

«FIRST_NAME» «LAST_NAME»
«ADDRESS»
«CITY», «STATE» «ZIP»

Re: *State of Tennessee v. Consumer Depot, LLC, Auction Logistix, LLC, Martin
Randolph Fike, Carol Fike, and Michael Hinds, Davidson County Circuit Court
No. 06C1093*

Dear «FIRST_NAME» «LAST_NAME»:

The State of Tennessee has resolved its Tennessee Consumer Protection Act law enforcement litigation in this matter by reaching a settlement with all of the defendants. Based on the terms of this court-approved settlement, you are eligible to receive a refund. This refund should represent the full amount that you paid to Consumer Depot or Auction Logistix, less any refunds you have already received.

We need you to confirm your mailing address before we can process your refund. We will send your refund check to the address listed above, so it is very important that it is correct. Please contact us as indicated below to confirm this information or provide us with a new mailing address. For your convenience, we have enclosed a self-addressed envelope with pre-paid postage for you. You may also contact us by any of the following methods to confirm your address:

INSERT SPECIALIST AT DCA'S CONTACT INFO

Under the terms of the settlement and state law, participation in this consumer refund process will not release or waive any rights that you may have. The Agreed Final Judgment can be found at: <http://www.tn.gov/attorneygeneral/cases/consumerdepot/consumerdepot.html>.

In order to permit us to move as quickly as possible to pay consumers, we would greatly appreciate hearing from you by no later than (INSERT DATE). Please let us know if you have any questions.

Sincerely,

Gary Cordell
Director, Division of Consumer Affairs

Robert E. Cooper, Jr.
Attorney General and Reporter

Exhibit C

9

STATE OF TENNESSEE



GARY W. CORDELL
DIRECTOR OF THE DIVISION OF CONSUMER AFFAIRS
DEPARTMENT OF COMMERCE AND INSURANCE
TELEPHONE (615) 741-4737
FACSIMILE (615) 532-4994
tn.gov/consumer



ROBERT E. COOPER, JR.
ATTORNEY GENERAL AND REPORTER
TELEPHONE (615) 741-1671
FACSIMILE (615) 741-2009
tn.gov/attorneygeneral

«DATE»

Via Certified U.S. Mail – Return Receipt Requested

CONSUMER DEPOT, LLC/AUCTION LOGISTIX, LLC
COURT-ORDERED CREDIT CARD REFUND

«FIRST_NAME» «LAST_NAME»
«ADDRESS»
«CITY», «STATE» «ZIP»

Re: *State of Tennessee v. Consumer Depot, LLC, Auction Logistix, LLC, Martin
Randolph Fike, Carol Fike, and Michael Hinds, Davidson County Circuit Court
No. 06C1093*

Dear «FIRST_NAME» «LAST_NAME»:

The State of Tennessee has resolved its Tennessee Consumer Protection Act law enforcement litigation in this matter by reaching a settlement with all of the defendants. In connection with this court-approved settlement, we are pleased to let you know that a refund of \$INSERT has been credited to the credit card you used to make your purchase from Consumer Depot or Auction Logistix. This credit should represent the full amount you paid, less any refunds you have already received. If you believe the amount of your credit is incorrect or it does not appear on your next statement, please contact:

(INSERT DCA SPECIALIST'S NAME, NUMBER AND EMAIL ADDRESS).

Under the terms of the settlement and state law, accepting this refund credit will not release or waive any rights that you may have. The Agreed Final Judgment can be found at <http://www.tn.gov/attorneygeneral/cases/consumerdepot/consumerdepot.html>.

The Division of Consumer Affairs and the Attorney General's Office are pleased to be able to provide this refund to you as part of the settlement.

Sincerely,

Gary Cordell
Director, Division of Consumer Affairs

Robert E. Cooper, Jr.
Attorney General and Reporter

Exhibit D

THE STATE OF TENNESSEE, ATTORNEY GENERAL
CONSUMER ADVOCATE AND PROTECTION DIVISIONFINANCIAL STATEMENT OF _____
(INDIVIDUAL VERSION)**Instructions:**

Complete all items, Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully answer a question, explain why. "Assets" and "Liabilities" includes ALL assets and liabilities located within the United States or elsewhere. Attach additional pages as necessary to answer all questions fully. Initial each page in the space provided in the lower right corner. Sign under oath before a notary and date the completed financial statement on the last page.

BACKGROUND INFORMATION**Item 1.** Information about You

Your Full Name _____ Social Security # _____
Current Address _____ Since (Date) _____

Identify any other name(s) and/or social security number(s) you have used, and the time period(s) during which they were used _____ Marital Status _____

Item 2. Information about Spouse, Dependents

Name _____ Date of Birth _____
Relationship _____ Social Security No. _____

Name _____ Date of Birth _____
Relationship _____ Social Security No. _____

Item 3. Employment Information

Provide the following information for this year to-date, and for each of the previous three full years, for each company of which you were a director, officer, employee, agent, or consultant at any time during that period.

Company Name & Address _____
Position Held and Dates Employed _____

Company Name & Address _____
Position Held and Dates Employed _____

Company Name & Address _____
Position Held and Dates Employed _____

FINANCIAL INFORMATION: ASSETS AND LIABILITIES

REMINDER: "Assets" and "Liabilities" include ALL assets and liabilities located within the United States or elsewhere, whether held individually or jointly.

Item 4. Safe Deposit Boxes

List all safe deposit boxes, located within the United States or elsewhere, held by you, your spouse, or any of your dependents, or held by others for the benefit of you, your spouse, or any of your dependents. *On a separate page, describe the contents of each box.*

<u>Owner's Name</u>	<u>Name & Address of Depository Institution</u>	<u>Box No.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Item 5. Cash, Bank Accounts, Money Market Accounts, Certificates of Deposit

List cash and all bank accounts, money market accounts, and/or certificates of deposit held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents. The term "cash" includes currency and uncashed checks.

Cash on Hand \$ _____ Cash Held for Your Benefit \$ _____

<u>Name on Account</u>	<u>Name & Address of Financial Institution</u>	<u>Account No.</u>	<u>Current Balance</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

Item 6. Publicly Traded and Government Securities

List all securities, including but not limited to, stock options, registered and bearer bonds, state and municipal bond, and mutual funds held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents. In the alternative, attach the most recent brokerage statement for each account.

<u>Name of Security</u>	<u># of units owned</u>	<u>Owner of Security</u>	<u>Location of Security</u>	<u>Current Value</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Item 7. Other Business Interests

List all other business interests, including but not limited to, non-public corporations, general or limited partnership interests, sole proprietorships, and oil and mineral leases, in which you, your spouse, or your dependents are an office, director, or have an ownership interest.

Business Format _____ Business Names & Address _____
 Ownership % _____ Officer/Director _____
 Owner (e.g., self, spouse) _____ Current Fair Market Value \$ _____

Business Format _____ Business Names & Address _____
 Ownership % _____ Officer/Director _____
 Owner (e.g., self, spouse) _____ Current Fair Market Value \$ _____

Item 8. Amounts Owed to You, Your Spouse, or Your Dependents

List all amounts owed to you, your spouse, or your dependents.

Debtor's Name, Address & Telephone No. _____
 Original Amount Owed \$ _____ Current Amount Owed \$ _____ Monthly Payment \$ _____

Debtor's Name, Address & Telephone No. _____
 Original Amount Owed \$ _____ Current Amount Owed \$ _____ Monthly Payment \$ _____

Item 9. Personal Property

List all personal property, by category, whether held for personal use or for investment, including but not limited to, furniture and household goods of value, computer equipment, electronics, coins, stamps, artwork, gemstones, jewelry, bullion, other collectibles, copyrights, patents, and other intellectual property, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

<u>Property Category</u>	<u>Name of Owner</u>	<u>Property Location</u>	<u>Acquisition Cost</u>	<u>Current Value</u>
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

Item 10. Cars, Trucks, Motorcycles, Boats, Airplanes, and Other Vehicles

List all cars, trucks, motorcycles, boats, airplanes, and other vehicles owned or operated by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

Vehicle Type _____ Make _____ Model _____ Year _____
 Registered Owner's Name _____ Registration State & No. _____
 Current Value \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

Vehicle Type _____ Make _____ Model _____ Year _____
 Registered Owner's Name _____ Registration State & No. _____
 Current Value \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

Vehicle Type _____ Make _____ Model _____ Year _____
 Registered Owner's Name _____ Registration State & No. _____
 Current Value \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

Vehicle Type _____ Make _____ Model _____ Year _____
 Registered Owner's Name _____ Registration State & No. _____
 Current Value \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

Item 11. Real Property

List all real estate held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

Type of Property _____ Property Location _____
 Name(s) on Title and Ownership Percentages _____
 Current Value \$ _____ Balance on First Mortgage \$ _____ Monthly Payment \$ _____
 Other Loan(s) (describe) _____ Current Balance \$ _____
 Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Type of Property _____ Property Location _____
 Name(s) on Title and Ownership Percentages _____
 Current Value \$ _____ Balance on First Mortgage \$ _____ Monthly Payment \$ _____
 Other Loan(s) (describe) _____ Current Balance \$ _____
 Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Type of Property _____ Property Location _____
 Name(s) on Title and Ownership Percentages _____
 Current Value \$ _____ Balance on First Mortgage \$ _____ Monthly Payment \$ _____
 Other Loan(s) (describe) _____ Current Balance \$ _____
 Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Item 12. Credit Cards

List each credit card held by you, your spouse, or your dependents. Also list any other credit cards that you, your spouse, or your dependents use.

Name of Credit Card (e.g., Visa, MasterCard, Department Store)	Account No.	Name(s) on Account	Current Balance	Minimum Monthly Payment
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

Item 13. Loans and Liabilities

List all loans or liabilities in your name, your spouse's name, or your dependents' names.

Name & Address of Lender/Creditor _____
 Nature of Liability _____ Name(s) on Liability _____
 Date of Liability _____ Amount Borrowed \$ _____ Current Balance \$ _____
 Payment Amount \$ _____ Frequency of Payment _____

Name & Address of Lender/Creditor _____
 Nature of Liability _____ Name(s) on Liability _____
 Date of Liability _____ Amount Borrowed \$ _____ Current Balance \$ _____
 Payment Amount \$ _____ Frequency of Payment _____

Name & Address of Lender/Creditor _____
 Nature of Liability _____ Name(s) on Liability _____
 Date of Liability _____ Amount Borrowed \$ _____ Current Balance \$ _____
 Payment Amount \$ _____ Frequency of Payment _____

Name & Address of Lender/Creditor _____
 Nature of Liability _____ Name(s) on Liability _____
 Date of Liability _____ Amount Borrowed \$ _____ Current Balance \$ _____
 Payment Amount \$ _____ Frequency of Payment _____

OTHER FINANCIAL INFORMATION

Item 14. Tax Returns

List all federal and state tax returns that were filed during the last three years by or on behalf of you. Provide a copy of each signed tax return that was filed during the last three years.

<u>Tax Year</u>	<u>Federal</u> <u>Refund Expected</u>	<u>State</u> <u>Refund Expected</u>	<u>Preparer's Name</u>
_____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	_____

Item 15. Transfers of Assets

List each person to whom you have transferred, in the aggregate, more than \$5000 in funds or other assets during the previous three years by loan, gift, sale, or other transfer. For each such person, state the total amount transferred during that period.

<u>Transferee's Name, Address & Relationship</u>	<u>Property</u> <u>Transferred</u>	<u>Aggregate</u> <u>Value</u>	<u>Transfer</u> <u>Date</u>	<u>Type of Transfer</u> <u>(e.g., Loan, Gift)</u>
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____

SUMMARY FINANCIAL SCHEDULES

Item 16. Combined Balance Sheet for You, Your Spouse, and Your Dependents. "You" includes yourself, your spouse, and your dependents.

ASSETSLIABILITIES

Cash on Hand	\$ _____	Credit Card Balances	\$ _____
Cash in Financial Institutions	\$ _____	Motor Vehicles, Boats, Airplanes (Liens)	\$ _____
Securities	\$ _____	Real Property - Mortgages	\$ _____
Other Business Interests	\$ _____	Loans Against Securities	\$ _____
Amounts Owed to You	\$ _____	Taxes Owed by You	\$ _____
Personal Property You Own	\$ _____	Other Loans and Liabilities (Itemize)	\$ _____
Airplanes You Own	\$ _____		\$ _____
Value of Real Property You Own	\$ _____		\$ _____
Other Assets You Own (Itemize)	\$ _____		\$ _____
_____	\$ _____		\$ _____
_____	\$ _____		\$ _____
_____	\$ _____		\$ _____
_____	\$ _____		\$ _____
_____	\$ _____		\$ _____
_____	\$ _____		\$ _____
_____	\$ _____		\$ _____
Total Assets	\$ _____	Total Liabilities	\$ _____

Item 17. Combined Average MONTHLY Income and Expenses for You, Your Spouse, and Your Dependents for the Last Six (6) Months

Provide the average monthly income and expenses for you, your spouse, and your dependents for the last six (6) months. Do not include credit card payments separately; rather, include credit card expenditures in the appropriate categories.

<u>INCOME</u>		<u>EXPENSES</u>	
Salary - After Taxes	\$ _____	Mortgage payments for Residence(s)	\$ _____
Fees, Commissions, and Royalties	\$ _____	Property Taxes for Residence(s)	\$ _____
Interest		Rental Property Expenses, Including	
Payments, Taxes, and Insurance	\$ _____	\$ _____	Mortgage
Dividends and Capital Gains	\$ _____	Car or other Vehicle Lease or Loan	
Gross Rental Income	\$ _____	Payments	\$ _____
Profits from Sole Proprietorships	\$ _____	Food Expenses	\$ _____
Distributions from Partnerships, S-Corporations, and LLCs	\$ _____	Clothing Expenses	\$ _____
Distributions from Trusts and Estates	\$ _____	Utilities	\$ _____
Social Security Payments	\$ _____	Medical Expenses, Including Insurance	\$ _____
Alimony/Child Support Received	\$ _____	Other Insurance Premiums	\$ _____
Other Income (Itemize)	\$ _____	Other Transportation Expenses	\$ _____
_____	\$ _____	Other Household Expenses	\$ _____
_____	\$ _____	Other Expenses (Itemize)	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
Total Income	\$ _____	Total Expenses	\$ _____

OATH OF INDIVIDUAL

I, _____, am submitting this financial statement with the understanding that it may affect action by the State of Tennessee, Attorney General or a state court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I certify under penalty of perjury under the laws of the State of Tennessee the foregoing is true and correct. I further swear under oath to the truthfulness and correctness of the facts and information set forth in this Financial Statement.

Signature

Full Name

Residential Address

Residential Telephone Number

Business Address

Business Telephone Number

Sworn to and subscribed before me
this ____ day of _____, 20____.

Notary Public

My commission expires:

RELEASE FORM

Consent to Release of Financial Records, Individual

I, _____, do hereby direct any bank, trust company, or financial institution at which I have an account of any kind upon which I am authorized to draw, and its officers, employees, and agents, to disclose all information and deliver copies of all documents of every nature in their possession or control that relate to any such account to any employee of the State of Tennessee, Attorney General and to give evidence relevant thereto, and this shall be irrevocable authority for so doing.

This direction is intended to apply to the laws of countries other than the United States that restrict or prohibit the disclosure of financial information without the consent of the holder of the account, or its officers, and shall be construed as consent with respect thereto.

Dated: _____, 20__.

Signature: _____

Name: _____

Title: _____

Sworn to and subscribed before me
this ____ day of _____, 20__.

Notary Public

My commission expires:

**THE STATE OF TENNESSEE, ATTORNEY GENERAL
CONSUMER ADVOCATE AND PROTECTION DIVISION**

**FINANCIAL STATEMENT OF _____
(CORPORATE VERSION)**

Instructions:

1. Complete all items, Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully answer a question, explain why. In completing this financial statement, "the corporation" refers not only to this corporation but also to each of its predecessors that are not named defendants in this action. When an Item asks for information about assets or liabilities "held by the corporation," include ALL such assets and liabilities held by the corporation or held by others for the benefit of the corporation. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued; on the continuation page(s), identify the Item number being continued.
2. An officer of the corporation must sign under oath before a notary and date the completed financial statement on the last page and initial each page in the space provided at the bottom of each page.

BACKGROUND INFORMATION

Item 1. General Information

Corporation's Full Name _____
Primary Business Address _____ Since (Date) _____

Provide all other current addresses & previous addresses for past five years, including post office boxes and mail drops:

Address _____	From/Until _____
Address _____	From/Until _____
Address _____	From/Until _____

List all predecessor companies for past five years:

Name & Address _____	From/Until _____
Name & Address _____	From/Until _____
Name & Address _____	From/Until _____

Item 2. Legal Information

Federal Taxpayer ID No. _____ State Tax ID No. _____

Item 3. Principal Stockholders

List all persons and entities that own at least 5% of the corporation's stock.

Financial Statement of _____

Name & Address% Owned

Item 4. Officers

List all of the corporation's officers, including *de facto* officers (individuals with significant management responsibility whose titles do not reflect the nature of their positions).

Name & Address% Owned

Item 5. Businesses Related to the Corporation

List all corporations, partnerships, and other business entities in which this corporation has an ownership interest.

Name & AddressBusiness Activities% Owned

Item 6. Businesses Related to Individuals

List all corporations, partnerships, and other business entities in which the corporation's principal stockholders and officers (*i.e.*, the individuals listed above) have an ownership interest.

Individual's NameBusiness Name & AddressBusiness Activities% Owned

Item 7. Related Individuals

List all related individuals with whom the corporation has had any business transactions during the three previous fiscal years and current fiscal year to-date. A "related individual" is a spouse, sibling, parent, or child of the principal stockholders and/or officers (*i.e.*, the individuals listed above).

Name & AddressRelationshipBusiness Activities

Financial Statement of _____

Item 8. Outside Accountants

List all outside accountants retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>	<u>CPA/PA</u>

Item 9. Corporation's Record Keeping

List all individuals within the corporation with responsibility for keeping the corporation's financial books and records for the last three years.

<u>Name, Address, & Telephone Number</u>	<u>Position(s) Held</u>

Item 10. Attorneys

List all attorneys retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>

Item 11. All litigation involving the Corporation

List all pending lawsuits in which the corporation is involved in court or before an administrative agency.

Opposing Party's Name & Address _____
 Court's Name & Address _____
 Docket No. _____ Relief Requested _____ Nature of Lawsuit _____
 Status _____

Opposing Party's Name & Address _____
 Court's Name & Address _____
 Docket No. _____ Relief Requested _____ Nature of Lawsuit _____
 Status _____

Financial Statement of _____

FINANCIAL INFORMATION

Item 12. Tax Returns

List all federal and state corporate tax returns filed for the last three complete fiscal years.
Attach copies of all returns.

<u>Tax Year</u>	<u>Tax Due</u> <u>Federal</u>	<u>Tax Paid</u> <u>Federal</u>	<u>Tax Due</u> <u>State</u>	<u>Tax Paid</u> <u>State</u>	<u>Preparer's Name</u>
_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	\$ _____	_____

Item 13. Safe Deposit Boxes

List all safe deposit boxes, located within the State of Tennessee or elsewhere, held by the corporation, or held by others for the benefit of the corporation. *On a separate page, describe the contents of each box.*

<u>Owner's Name</u>	<u>Name & Address of Depository Institution</u>	<u>Box No.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Item 14. Financial Statements

List all financial statements that were prepared for the corporation's last three complete fiscal years and for the current fiscal year to-date. *Attach copies of all statements, providing audited statements if available.*

<u>Year</u>	<u>Balance</u> <u>Sheet</u>	<u>Profit & Loss</u> <u>Statement</u>	<u>Cash Flow</u> <u>Statement</u>	<u>Changes in</u> <u>Owner's Equity</u>	<u>Audited?</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Item 15. Financial Summary

For each of the last three complete fiscal years and for the current fiscal year to-date for which the corporation has not provided a profit and loss statement in accordance with Item 14 above, provide the following summary financial information.

Financial Statement of _____

	<u>Current Year To-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>3 Years Ago</u>
<u>Gross Revenue</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Expenses</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Net Profit After Taxes</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Payable</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Receivables</u>	\$ _____	\$ _____	\$ _____	\$ _____

Item 16. Cash, Bank, and Money, Market Accounts

List cash and all bank and money market accounts, including but not limited to checking accounts, savings accounts, and certificates of deposit, held by the corporation. The term "cash" includes currency and uncashed checks.

Cash on Hand \$ _____ Cash Held for the Corporation's Benefit \$ _____

<u>Name & Address of Financial Institution</u>	<u>Signatory(ies) on Account</u>	<u>Account No.</u>	<u>Current Balance</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

Item 17. Real Estate

List all real estate, including leaseholds in excess of five years, held by the corporation.

Type of Property _____ Property Location _____
 Name(s) on Title and Ownership Percentages _____
 Current Value \$ _____ Loan or Account No. _____
 Lender's Name and Address _____
 Current Balance on First Mortgage \$ _____ Monthly Payment \$ _____
 Other Loan(s) (describe) _____ Current Balance \$ _____
 Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Type of Property _____ Property Location _____
 Name(s) on Title and Ownership Percentages _____
 Current Value \$ _____ Loan or Account No. _____
 Lender's Name and Address _____
 Current Balance on First Mortgage \$ _____ Monthly Payment \$ _____
 Other Loan(s) (describe) _____ Current Balance \$ _____
 Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Item 18. Other Assets

List all other property, by category, with an estimated value of \$5000 or more, held by the corporation, including but not limited to, inventory, machinery, equipment, furniture, vehicles, customer lists, computer software, patents, and other intellectual property.

Financial Statement of _____

<u>Property Category</u>	<u>Property Location</u>	<u>Acquisition Cost</u>	<u>Current Value</u>
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

Item 19. Trusts and Escrows

List all persons and other entities holding funds or other assets that are in escrow or in trust for the corporation.

<u>Trustee or Escrow Agent's Name & Address</u>	<u>Description and Location of Assets</u>	<u>Present Market Value of Assets</u>
		\$
		\$
		\$
		\$

Item 20. Monetary Judgments and Settlements Owed By and To the Corporation

List all monetary judgments and settlements, recorded and unrecorded, owed by and to the corporation.

Opposing Party's Name & Address _____		
Court's Name & Address _____	Docket No. _____	
Nature of Lawsuit _____	Date of Judgment _____	Amount \$ _____

Opposing Party's Name & Address _____		
Court's Name & Address _____	Docket No. _____	
Nature of Lawsuit _____	Date of Judgment _____	Amount \$ _____

Item 21. Government Orders and Settlements

List all existing orders and settlements between the corporation and any federal or state government entities.

Name of Agency _____	Contact Person _____
Address _____	Telephone No. _____
Agreement Date _____	Nature of Agreement _____

Name of Agency _____	Contact Person _____
Address _____	Telephone No. _____
Agreement Date _____	Nature of Agreement _____

Financial Statement of _____

Item 22. Credit Cards

List all of the corporation's credit cards and retail charge accounts and the individuals authorized to use them.

<u>Name of Credit Card or Store</u>	<u>Names of Authorized Users and Positions Held</u>

Item 23. Compensation of Employees

List all compensation and other benefits paid by the corporation to the five most highly compensated employees, independent contractors, and consultants, for the two previous fiscal years and current fiscal year to-date. "Compensation" includes, but is not limited to, salaries, commissions, consulting fees, bonuses, dividends, distributions, royalties, pensions, and profit sharing plans. "Other benefits" include, but are not limited to, loan payments, rent, car payments, and insurance premiums, whether paid directly to the individuals, or paid to others on their behalf.

<u>Name/Position</u>	<u>Current Fiscal Year</u> <u>To-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>Compensation or</u> <u>Type of Benefits</u>
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	

Item 24. Compensation of Board Members and Officers

List all compensation and other benefits received from the corporation by Board Members and Officers for the current fiscal year to-date and the two previous fiscal years. "Compensation" includes, but is not limited to, salaries, commissions, consulting fees, dividends, distributions, royalties, pensions, and profit sharing plans. "Other benefits" include, but are not limited to, loans, loan payments, rent, car payments, and insurance premiums, whether paid directly to the individuals, or paid to others on their behalf.

<u>Name/Position</u>	<u>Current Fiscal Year</u> <u>To-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>Compensation or</u> <u>Type of Benefits</u>
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	

Financial Statement of _____

Item 25. Transfers of Assets Including Cash and Property

List all transfers of assets over \$5,000 made by the corporation, other than in the ordinary course of business, during the previous three years, by loan, gift, sale, or other transfer.

<u>Transferee's Name, Address, & Relationship</u>	<u>Property Transferred</u>	<u>Aggregate Value</u>	<u>Transfer Date</u>	<u>Type of Transfer (e.g., Loan, Gift)</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Financial Statement of _____

OATH OF OFFICER

I, _____, certify under penalty of perjury under applicable law that the foregoing is true and correct as an officer of _____ (insert name of corporation), am submitting this financial statement with the understanding that it may affect action by the State of Tennessee, Attorney General or a state court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I certify under penalty of perjury under the laws of the State of Tennessee the foregoing is true and correct. I further swear under oath to the truthfulness and completeness of the facts and information set forth in this Financial Statement.

Signature

Full Name: _____

Officer's Corporate Position

Business Address

Business Telephone Number

Sworn to and subscribed before me
this ____ day of _____, 20__.

Notary Public

My commission expires:

Financial Statement of _____

RELEASE FORM

Consent to Release of Financial Records, _____ (Corporate Form)

I, _____, as an officer of _____, do hereby direct any bank, trust company, or financial institution at which _____ has an account of any kind upon which _____ is authorized to draw, and its officers, employees, and agents, to disclose all information and deliver copies of all documents of every nature in their possession or control that relate to any such account to any employee of the State of Tennessee, Attorney General and to give evidence relevant thereto, and this shall be irrevocable authority for so doing.

This direction is intended to apply to the laws of countries other than the United States that restrict or prohibit the disclosure of financial information without the consent of the holder of the account, or its officers, and shall be construed as consent with respect thereto.

Dated: _____, 20__.

Signature: _____

Name: _____

Title: _____

Sworn to and subscribed before me
this ____ day of _____, 20__.

Notary Public

My commission expires:
